



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 14 2013

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

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In Reply Refer to:

EPA OCR File No. 11R-11-R4

David A. Ludder, Esq.
9150 McDougal Ct.
Tallahassee, FL 32312-4208

Re: Dismissal of Title VI Administrative Complaint Without Prejudice

Dear Mr. Ludder:

This letter is sent to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) is dismissing the Title VI administrative complaint dated November 30, 2011, that you filed on behalf of Mary Allen, Marilyn Blackwell, and Christine Colvin against the Florida Department of Environmental Protection (FDEP), without prejudice. The complaint alleges that FDEP violated Title VI of the Civil Rights Act of 1964, as amended, (Title VI), 42 U.S.C. §§2000d *et seq.*, and EPA's regulations implementing Title VI, found at 40 C.F.R. Part 7.

Complaint Allegation

The complaint alleges that FDEP committed a discriminatory act by issuing Air Permit No. 0450012-002-AC to Northwest Florida Renewable Energy Center (NWFREC), LLC, and authorizing "the construction of a nominal 55 megawatts (MWnet) biomass fed gasification and combined cycle (BGCC) power plant called the NWFREC." The impacts alleged are: "(1) human exposure to facility emissions, particularly carcinogens; (2) light 'pollution' resulting from operation of an elevated flare; and, (3) increased traffic congestion, accident risk, vehicular emissions and noise from increased truck traffic."

OCR accepted the following allegation for investigation:

FDEP's authorization of the permit for the NWFREC is discriminatory because the alleged adverse impacts will fall disparately upon African Americans within 2.0 kilometers of the facility.

This allegation was accepted for investigation on March 22, 2012 because it met all four of EPA's jurisdictional requirements as outlined in the letter.¹

¹ Letter from Rafael DeLeon to Herschel T. Vinyard. "Re: Acceptance of Title VI Administrative Complaint for Investigation, EPA OCR File No. 11R-11-R4." March 22, 2012.

Dismissal Without Prejudice

In July 2012, you provided OCR with information that the developer of NWFREC had withdrawn from the project, citing an inability to secure financing.² EPA confirmed with FDEP that the developer is unable to build the facility. Because it is unclear whether the developer will obtain financing to build the facility during the permit period, which expires on December 31, 2015, the allegation in the complaint is speculative in nature and anticipates future events that may not occur as outlined in the complaint. Therefore, OCR finds that this complaint is not ripe for review.

It is OCR's general practice to dismiss without prejudice when the complaint is unripe for further investigation. As a result, such complaints are generally closed, but the Complainant may re-file the complaint within 60 calendar days of the developer securing financing. In the event that you do resubmit this complaint, please include the file number 11R-11-R4, and note that the re-filed complaint will be subject to the standard jurisdictional requirements found in EPA's nondiscrimination regulations.³

If you have any questions, please contact Helena Wooden-Aguilar by telephone at (202) 564-0792, by email at Wooden-Aguilar.Helena@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C., 20460.

Sincerely,



Rafael DeLeón
Director

cc: Mr. Steve Pressman, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Ms. Naima Halim-Chestnut, Title VI Contact,
EPA Region 4
61 Forsyth Street, S.W.
Mail Code: 9T25
Atlanta, GA 30303

²Email from David Ludder to Helena Wooden-Aguilar. "EPA OCR File No. 11R-11-R4 Northwest Florida Renewable Energy Center." July 27, 2012.

³ 40 C.F.R. §§ 7.15 and 7.120(b).